

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

BRYAN PERRY,

Petitioner

v.

MICHAEL OVERMYER, *et al.*,

Respondents

Civil No. 3:16-cv-1667

(Judge Mariani)

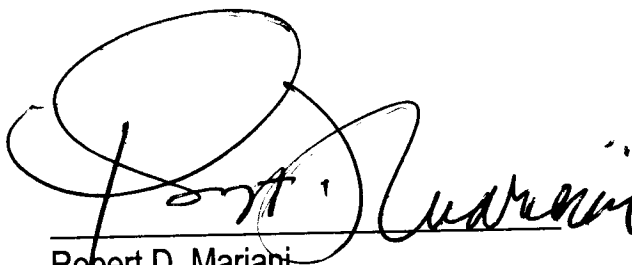
ORDER

AND NOW, this 4th day of February, 2019, upon consideration of the petition for writ of habeas corpus (Docs. 1, 11), and in accordance with the Court's Memorandum of the same date, **IT IS HEREBY ORDERED THAT:**

1. The petition for writ of habeas corpus is **GRANTED IN PART** with respect to Petitioner's claim that his Sixth Amendment right to counsel was violated in that appellate counsel was ineffective in failing to raise, on direct appeal, the jury's receipt of unmarked evidence. Within sixty (60) days from the date of this Order, the Commonwealth of Pennsylvania shall appoint PCRA counsel to represent Petitioner, the PCRA court shall conduct an evidentiary hearing to determine whether appellate counsel, attorney Andrea Haynes, was ineffective by failing to raise, on direct appeal, the jury's receipt of unmarked evidence. The PCRA court shall require the testimony of appellate counsel, attorney Andrea Haynes, at the evidentiary hearing.
2. The petition for writ of habeas corpus is **GRANTED IN PART** with respect to Petitioner's claim that his Sixth Amendment right to counsel was violated in that appellate counsel was ineffective in failing to raise, on direct appeal, that his criminal attempt to commit homicide and aggravated assault convictions should have merged for sentencing purposes. Within sixty (60) days from the date of this Order, the Commonwealth of Pennsylvania shall appoint PCRA counsel to represent Petitioner, the PCRA court shall conduct an evidentiary hearing to determine whether appellate counsel, attorney Andrea Haynes,

raised this issue on appeal and, if this issue was not raised on appeal, was ineffective by failing to raise, on direct appeal, that Petitioner's criminal attempt to commit homicide and aggravated assault convictions should have merged for sentencing purposes.

3. The petition for writ of habeas corpus is **DENIED** in all other respects.
4. All pending motions (Docs. 24, 29) are **DISMISSED**.
5. The Clerk of Court is directed to **CLOSE** this case.
6. A certificate of appealability will not issue for the claims on which the Court denies relief because reasonable jurists would not debate this Court's rulings with respect to those claims. See 28 U.S.C. § 2253(c)(2).

A handwritten signature in black ink, appearing to read "Robert D. Mariani", written over a horizontal line.

Robert D. Mariani
United States District Judge